IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3325 OF 1989

M/s. Bombay Pharma Products, a firm registered under the Indian Partnership Act, 1932 and carrying on business at 45 Mittal Chambers, Nariman Point, Mumbai - 400 021. ..Petitioner.

V/s.

1) Additional Collector of Customs, Group -I,New Customs House, Mumbai - 400 038.

2) Union of India. ..Respondents.

Ms.Balani with Mr.Anil Balani i/b. C.R.Patel for petitioner.

Mr.K.R.Choudhary for respondents.

CORAM : H.L.GOKHALE & J.P.DEVADHAR, JJ.

DATED : 18TH NOVEMBER, 2005.

JUDGMENT (PER H.L.GOKHALE, J.)

1. Heard. Ms.Balani in support of the petitioner. Mr.Choudhari appears for the respondents. Petitioner is seeking to challenge the order dated 12th September, 1989 passed by the first respondent - Additional Collector of Customs, whereby poppy seeds imported by the petitioner firm under the Replenishment

Licence (‘REP licence’ for short) were directed to be confiscated under section 111(d) of the Customs Act, 1962. The order gave the option to the petitioner to redeem the goods by paying fine of Rs.90,000/-. The order also imposed penalty of Rs.50,000/- under section 112 of the Customs Act, 1962. When the petition was admitted on 28/11/1989 the petitioner was allowed to clear the goods on furnishing bank guarantee in the sum of Rs.90,000/- and personal bond in the sum of Rs.50,000/-. We are told that necessary bank guarantee and bond has been given and has been kept alive and the goods have been redeemed.

2. The facts relevant for the purpose of this petition are that the petitioner is a transferee of the REP licence, which was originally issued to one Rabbani Traders. The description of the goods which were permitted to be imported as per the said licence is done in the licence (and divided in part A to E), a copy of which is annexed at Exhibit-A to the petition. The relevant portion D reads "SEEDS / BULBS / MOTHER PLANT GERM PLASM."

3. The submissions of the petitioner is that this entry permitted import of poppy seeds inasmuch as, all

the seeds could be imported under entry ‘seeds’ and there is no violation of the particular licence to invite action under section 111(d) of the Customs Act, 1962. Ms.Balani appearing for the petitioner referred to the Judgment of our Division Bench in **Globe Enterprises, Delhi V/s. Union of India & Ors. [2004(2) Mh.L.J. 645]** to which one of us (Devadhar, J.) was a party. She referred to para 7 of the Judgment whereunder poppy seeds imported were confiscated by the customs authorities. Para 7 of the Judgment recorded the contention that it may be that flowers of the poppy seeds have some medical use but the Court held that merely because the flowers of poppy seeds as and when cultivated could be used for medicinal purpose, is no ground to hold that the poppy seeds are covered within the meaning of ‘seeds of vegetables / flowers’. It refers to the Judgment of the Tribunal in the case of **Bombay Pharma Products V/s. Collector of Customs, Nhava Sheva {1996(87) E.L.T. 625 (Tribunal)]**. It was submitted by the petitioner in that matter relying upon the concerned Judgment that the proposition canvassed by them had been accepted by the Tribunal. However, the endorsement on the licence before the Tribunal in that matter was only ‘seeds’ whereas in the case before the High Court, the

endorsement made on the licence was vegetables / flowers and, therefore, the Court held that the Bombay Pharma Products case would not help. In our view, the Judgment in Globe Enterprises cannot help the petitioner.

4. In any case, the Judgment rendered by the Division Bench of this Court in the case of **SVA Udyog Viniyog Ltd. V/s. Union of India [1993(65) E.L.T. 20(Bom.)]** has been confirmed by the Apex Court in the case of **SAV Udyog Viniyog Ltd. V/s. Union of India [2001(133) E.L.T.261 (S.C.)**. Somewhat similar entries were under consideration in the matter. Almonds had been imported under the Replenishment licence and it was sought to be contended that they were seeds of germination and plantation. The Apex Court turned down that submission and held that basically the entry ‘seeds’ would not cover such dry fruits. The High Court had held that the Item ‘seeds’ would cover imports which are basically for the purpose of germination or plantation. This view of the Division Bench has been quoted and approved in para 3 of the Judgment of the Apex Court.

5. In the present case, the entry with which we

are concerned is ‘D’- "SEEDS / BULBS / MOTHER PLANT GERM PLASM." The entries concerning the goods permitted in the licence were A - Packing materials of the types mentioned such as Grape Guard paper, B - A certain chemical C - (Deleted), D- Seeds, Bulbs, Mother Plant Germ Plasm, E - Horticulture Grad and Vermiculate. All these items including those in entry - D are basically for the purpose of Horticulture and not for consumption or any other purpose. In the circumstances in our view, the authorities were right in proceeding to confiscate the goods which were obviously imported under the misrepresentation of entries. These entries including ‘seeds’ has to be read meaningfully and ejusdem generic and when read meaningfully the import thereof would be clear. It would certainly not cover poppy seeds as were sought to be canvassed.

6. A remedy of an appeal is available against the impugned order. However, inasmuch as the present petition has been admitted, we are disposing of this petition as it is, since it was submitted by the petitioner that without resorting to that remedy, the petition be heard and decided.

7. In the circumstances, we do not find any merit

in the petition and there is no error in the impugned order.

8. Since the petition is not being entertained, it would be open for the respondents to encash the bank guarantee and also insist on payment of the amount of personal bond given by the petitioner.

9. Ms.Balani submitted that the amount of penalty and fine be reduced. She referred to the Judgment of a Division Bench of this Court in the case of **M.B.Impex V/s. Union of India [2005(187) E.L.T.289 (Bom.)]**. In that matter, the amount had been reduced. That was however a case where the amount of fine had already been deposited. In the present case, the goods which were sought to be confiscated have been redeemed by giving bank guarantee. On this bank guarantee, the respondents will not get any other amount apart from the guaranteed amount. They will not get the interest thereon. Mr.Chaudhary has rightly pointed out that the C.I.F. value of the goods was in the range of Rs.80,000/- and, therefore, the fine of Rs.90,000/- was fully justified. In the circumstances, we are not inclined to reduce the amount of fine and penalty in any manner.

10. Petition accordingly dismissed though without any order as to costs.

(H.L.GOKHALE, J.)

(J.P.DEVADHAR, J.)